

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 1185 OF 1997
With
CIVIL APPLICATION NO.12063 OF 2005
TO
CIVIL APPLICATION NO.12064 OF 2005
With
CIVIL APPLICATION (STAMP) NO. 8273 OF 2004
In
SPECIAL CIVIL APPLICATION NO. 1185 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge?
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SAURASHTRA UNIVERSITY - Petitioner(s)

Versus

SHAMBHUBHAI HIRJIBHAI PADALIA - Respondent(s)

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Appearance :

MR. ANOOP KRISHNAN for M/S. TRIVEDI & GUPTA for Petitioner(s).
MR. MURLI DEVNANI for MR. YOGESH S. LAKHANI for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/12/2005

COMMON ORAL JUDGMENT

1. The petitioner-Saurashtra University has filed this petition under Articles 226 and 227 of the Constitution of India praying for quashing and setting aside the award passed

by the Labour Court, Rajkot in Reference (LCR) No.2043 of 1988 on 20th July, 1996, whereby the Labour Court has directed the petitioner to reinstate the respondent with continuity of service and full back wages.

2. The case of the petitioner is that the respondent joined the petitioner-University as a Cook-cum-Attendant *vide* Office Order dated 25th June, 1985 for a period of one year on probation. During the course of period of probation, though the performance of the respondent as a Cook-cum- Attendant was not satisfactory and upto the mark, only with a view to afford him a chance to improve, his probation period was subsequently extended for a period of three months and as per the extension letter, the respondent's tenure as probationer was to come to an end on 30th September, 1986. It is also the case of the petitioner that even after the extension of his probation period of three months, the performance of his duties was not found satisfactory and upto the mark. Hence, as per the conditions of his appointment, as a fixed term appointment for a stipulated period, he came to be relieved from the service of the petitioner with effect from 30th September, 1986 as a Cook-cum-Attendant.

3. The respondent challenged the said order before the Labour Court, Rajkot in Reference (LCR) No.2043 of 1988 on several grounds. The Labour Court has, however, granted the said Reference in favour of the respondent and directed the petitioner to reinstate the respondent with continuity of

service and full back wages. It is this order of the Labour Court, which is under challenge in the present petition.

4. Mr. Anoop Krishnan, learned Advocate appearing for M/s. Trivedi & Gupta for the petitioner, challenged the award passed by the Labour Court mainly on the ground that the Labour Court has no jurisdiction to entertain the Reference. He has further submitted that the respondent was only a probationer and the provisions contained in Section-25(F) and other relevant regulations are not required to be applied and as per the settled legal position, the termination of the petitioner would not amount to retrenchment. He has also challenged the award of the Labour Court on the ground that the respondent-workman was gainfully employed and despite the fact that the respondent has deposed in his evidence to that effect, the Labour Court has awarded full back wages to him and has thus committed an error in passing the impugned award.

4.1 So far as the contention regarding the jurisdiction of the Labour Court is concerned, Mr. Krishnan relied upon a decision of this Court in the case of **Saurashtra University vs. Saurashtra University Karmachari Parivar**, decided on 26th June, 2003 in Special Civil Application No.5433 of 2002 with Civil Application No.1649 of 2003, wherein this Court has observed that an appropriate forum for resolution of the dispute is provided under the special statute by a specific provision, that is, Section-8 of the Act, and the jurisdiction of the other forums is barred by Subsection-3 of Section-7. In

such circumstances, it will be the forum provided under the statute, which will have the jurisdiction to decide the dispute between the parties. The Court has further held that the forum, which is provided under the Act, will have jurisdiction to try and decide the dispute between the parties and not the Labour Court or the Industrial Tribunal. The Court, therefore, directed the Industrial Tribunal to return the papers of the Reference to the respondent-Union so as to file the same before the Tribunal constituted under the Act for its adjudication.

4.2 The aforesaid judgement of the learned single Judge was challenged in the Letters Patent Appeal before the Division Bench and the Division Bench has confirmed the judgement of the learned single Judge.

4.3 In view of the aforesaid judgement of the learned single Judge, as confirmed by the Division Bench, this Court is of the view that the Labour Court has no jurisdiction to decide the Reference when a specially constituted Tribunal is available for redressing the grievance of the respondent-workman.

5. Even on merits, the finding given by the Labour Court is not sustainable in view of the fact that the respondent-workman was merely a probationer. He was appointed for a period of one year and the said probation period was extended for three months and during the extended period of probation, the respondent was terminated. Mr.Krishnan relied

upon a judgement of the Honourable Supreme Court in the case of ***Municipal Committee, Sirsa vs. Munshi Ram, (2005) 2 S.C.C. 382,*** wherein it is observed that the respondent having been appointed as a probationer and his working having been found not to the satisfaction of the employer, it was open to the management to terminate his services. Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot *ipso facto* be termed as misconduct requiring an inquiry. It may be a ground for the employer's assessment of the workman's efficiency and efficacy to retain him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge.

5.1 Mr.Krishnan has further relied upon a decision of the Honorable Supreme Court in the case of ***Kalpataru Vidya Samasthe (R) & Anr. vs. S.B. Gupta & Anr., (2005) 7 S.C.C. 524,*** wherein the Honourable Supreme Court has observed that it is now a well settled principle of law that the appointment made on probation/*ad hoc* for a specific period of time and such appointment comes to an end by efflux of time and the person holding such post can have no right to continue in the post. The Honourable Supreme Court has further observed that having accepted the terms and conditions stipulated in the appointment order and allowed the period for which he was appointed to have been lapsed by efflux of time, he is not permitted to turn his back and say that the appointment was *de hors* the Rules or the

terms and conditions stipulated in the appointment were not legally valid.

5.2 Mr.Krishnan further relied upon the decisions of the Honourable Supreme Court in the case of ***CREF Finance Ltd. vs. Shree Shanthi Homes (P) Ltd. & Anr., (2005) 7 S.C.C. 467***, and in the case of ***Rajasthan State Road Transport Corporation & Ors. vs. Zakir Hussain, (2005) 7 S.C.C. 447***, wherein, after referring to its decision in the case of ***State of U.P. vs. Kaushal Kishore Shukla, (1991) 1 S.C.C. 691***, the Honourable Supreme Court observed that the respondent in the instant case is a temporary employee of the Rajasthan State Road Transport Corporation on probation for a period of two years. His services were terminated by an order of termination simpliciter. The order is innocuous without any stigma or evil consequences visiting him. The Court further held that the said order is not open to challenge. In this very judgement, the Court further observed that the terms of appointment are governed by the letter of appointment and, therefore, the management was well within its right to terminate the services of the respondent probationer during the period of probation if his services were not found to be satisfactory during the said period. The courts below and the High Court have committed serious error in decreeing the suit as prayed for and for directing reinstatement with full back wages.

5.3 On the basis of the aforesaid decisions, Mr.Krishnan submitted that the award passed by the Labour Court is contrary

to the well settled principles of law and hence, the same is required to be quashed and set aside.

5.4 Mr.Krishnan has further submitted that the Labour Court has also committed a very serious error in awarding back wages as the respondent workman himself has admitted that he was a temporary employee. Even otherwise a specific plea was not raised or pressed into service and despite this fact, the Labour Court has awarded back-wages. In support of his submission, he relied upon a decision of the Honourable Supreme Court in the case of **Allahabad Sansthan vs. Daya Shankar Rai & Anr., (2005) 5 S.C.C. 124**, wherein the Court has observed that a law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which the industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. The Court has further observed that respondent No.1 had filed the written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. The Court, therefore, came to the conclusion that in absence of any such pleadings, the respondent-workman was not entitled to the back-

wages.

6. The respondent-workman has filed an affidavit-in-reply and submitted that this Court has stayed the award of reinstatement and did not extend the benefits as contemplated under Section-17(B) of the Industrial Disputes Act. An application was, therefore, moved by the petitioner for getting the benefits of Section-17(B) of the I.D. Act, being Civil Application No.10965 of 2000, which came up for hearing on 10th October, 2001. After hearing the matter at length, the Court has allowed the said application by directing the petitioner-University to give the benefits to the respondent from the date of the award as per the provisions of Section-17(B) of the I.D. Act on filing the affidavit stating therein that he was not gainfully employed during the interregnum period. Immediately after filing of the aforesaid affidavit, on 30th October, 2005, a further affidavit was filed on behalf of the petitioner wherein it was stated that after discharge by the University, the respondent-workman was working as a 'Cook' at various places and earning Rs.3,000/- per month. However, he has not disclosed the names of the persons at whose places, he was serving as a cook.

7. After having considered the arguments canvassed on behalf of the petitioner and after having gone through the award passed by the Labour Court and after having considered the decided case law on the issues raised before this Court, this Court is of the view that the Labour Court/Industrial

Tribunal has no jurisdiction to entertain the reference, raising an industrial dispute by the workman. Even otherwise, as per the law laid down by the Honourable Supreme Court, since the respondent-workman was merely a probationer, he was not entitled to claim the benefits of section-25(F) and other provisions of the I.D. Act. In that view of the matter, the award passed by the Labour Court is not sustainable and hence, it is accordingly quashed and set aside. The petition is accordingly allowed. Rule is made absolute. No order as to costs.

8. In view of the disposal of the main petition, Civil Application Nos.12063/2005 and 12064/2005, and Civil Application (Stamp) No.8273/2004 do not survive and they are disposed of accordingly.

[K. A. Puj, J.]

*kamlesh**